IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 266 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HITESHBHAI MADHUSUDAN RANA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 266 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 19-12-2003. By the said order, the petitioner is detained as a "bootlegger" under P.A.S.A. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about two criminal cases registered against the petitioner under Bombay Prohibition Act. After considering the pending criminal cases, aforesaid detention order was passed, which is under challenge in this petition.

2) Learned advocate for the petitioner submitted that in the present case the authority has not recorded statement of any witnesses. It is also submitted that only on the basis of two criminal cases registered under Bombay Prohibition Act, the petitioner could not have been detained under P.A.S.A. He submitted that, at the most, these cases can be said to be the cases of breach of law and order and not of breach of public order. To substantiate his say, learned advocate for the petitioner has relied upon the decision of the Division Bench of this Court rendered in L.P.A. No.223/2000, wherein in para 5, it is held as under :

> "5. If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S.Zala v. State of Gujarat (Supra), i.e. with regard to the presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is, of course, true that after narrating the particulars of the criminal cases, the detaining authority has mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgement can be read in isolation and bereft the context. The judgement is to be read as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgement are to be considered in light of the

earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public order or breach of public health is concerned, credible material has to be there. In the case of K.S.Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it has been held that there had been violation or infringement of the petitioner's right against such statements. In this view of the matter whatsoever said by the three witnesses with regard to unregistered cases and with regard to the three incidents referred to hereinabove, it cannot be considered to be the material germane for the purpose of consideration of the threat to the public health and public order. Thus, the only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by any credible material has simply observed that the appellant's activities were an obstacle to the public health and public order. In this view of the matter keeping in view the observations made by the

> Supreme Court in the case of K.S.Zala v. State of Gujarat (supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach of public health and public order. Learned counsel for the appellant has also argued several other points before us, but we do not find it necessary to go into those grounds. It may be mentioned that it was not a case of breach of public order or public health and it was not argued before the learned Single Judge. Even if that be so, in such matters, the point which arises on the face of the facts of the case by the body of the order itself, which does not require further investigation of the facts, can certainly be allowed to be raised and we allow learned counsel for the appellant to raise this point and find that this point is not without substance. The impugned order passed by the learned single Judge upholding the detention order therefore, cannot be said to be in consonance with the settled position of law. The detention order deserves to be quashed and set aside on this ground alone. We, therefore, do not go into other grounds which were raised on behalf of the appellants."

3) Learned advocate for the petitioner has further submitted that the last registered case against the petitioner is of 21-11-2003 and even though there are no statements of any witnesses, it was not necessary for the detaining authority to wait for such a long time for passing the detention order and there is a delay of 28 days in passing the order from the date of last incident. So far as delay in passing the order is concerned, it is no doubt true that the respondents have not filed any reply explaining such delay in passing the order, however, the learned advocate for the petitioner is not in a position to point out that, the point regarding delay is taken by him in the petition. Since the point regarding delay is not taken in the petition, even though no affidavit is filed, it cannot be presumed that the authority has not explained the delay because this point is not taken even by the petitioner.

4) In view of the above judgement of the Division Bench, it cannot be said that there is breach of public order as in the instant case, no statement of any witness is taken by the authority and sole base of passing the detention order is two criminal cases. Therefore, only on the ground that there is no breach of public order, this petition is required to be allowed.

5) For the foregoing reasons, this petition is allowed. The order of detention dated 19-12-2003 is quashed and set aside. The detenu, Shri Hiteshbhai Madhusudan Rana is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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